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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MARIANNE SOLARI HUDACK et al.,	
Plaintiffs and Appellants,	E070525
v.	(Super.Ct.No. MCC1600747)
WILLIAM BLASSER et al.,	OPINION
Defendants and Respondents.	

APPEAL from the Superior Court of Riverside County. Angel M. Bermudez, Judge. Affirmed.

Larry J. Hudack, in pro. per., for Plaintiff and Appellant.

Marianne S. Hudack, in pro. per., for Plaintiff and Appellant.

Manning & Kass, Ellrod, Ramirez, Trester, Fredric W. Trester and Jessica Rosen for Defendants and Respondents.

I. INTRODUCTION

In this action, plaintiffs, Marianne Solari Hudack and Larry J. Hudack, sued their former attorney and his law practice, defendants, William Blasser and Blasser Law. In their operative second amended complaint (SAC), plaintiffs alleged six causes of action, styled as deceit, constructive fraud, fraudulent concealment, fraudulent inducement, fraud, and conspiracy to commit fraud.

The trial court sustained defendants' general demurrer to the SAC, without leave to amend, and dismissed plaintiffs' entire action. (Code Civ. Proc., § 581d.)[1] The court ruled each of the SAC's causes of action were barred by the one-year limitations period of section 340.6, subdivision (a) (section 340.6(a)), which applies to "[a]n action against an attorney for a wrongful act or omission, *other than for actual fraud*, arising in the performance of professional services . . . ." (Italics added.)

Plaintiffs appeal, claiming the demurrer was erroneously sustained because each cause of action falls within the actual fraud exception to section 340.6(a). We conclude the court correctly determined that the entire SAC was barred by section 340.6(a)'s one-year limitations period, even though each cause of action is styled as, or attempts to plead, a form of actual or intentional fraud. We also conclude plaintiffs have not demonstrated a reasonable possibility they can amend the SAC to allege a claim for actual or intentional fraud, and plaintiffs' additional arguments lack merit.

We therefore affirm the judgment of dismissal.

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[1] Undesignated statutory references are to the Code of Civil Procedure.

II. FACTS AND PROCEDURE

A. *The SAC's Allegations*[2]

On January 22, 2014, plaintiffs signed an "Attorney Client Fee Agreement" with William Blasser as "Attorney" and plaintiffs as "Clients" (the Fee Agreement). The Fee Agreement is attached to the SAC as "Exhibit 1." Pursuant to the Fee Agreement, "[p]laintiffs engaged" Blasser to represent them in a legal malpractice action against plaintiffs' former attorney, R. Keith McKellogg.

McKellogg had represented plaintiffs in an action against a real estate developer, Wayne Siggard, for damaging plaintiffs' real property (the Siggard action). Plaintiffs alleged Siggard trespassed and encroached on plaintiffs' real property and damaged the property by grading and dumping debris and giant boulders on it. In the same action, plaintiffs sued their homeowners' association, La Cresta Property Owners Association, for failing to enforce the association's covenants, conditions, and restrictions. Siggard cross-complained against plaintiffs, and plaintiffs were found liable to Siggard and the La Cresta Property Owners Association for a total of $1,740,521.

Plaintiffs believed McKellogg's representation of them in the Siggard action fell "below the required standard of care" so "[p]laintiffs engaged Blasser Law and William Blasser to provide legal representation in an arbitration" of their legal malpractice claim against Siggard. The Fee Agreement provides: "Attorney shall provide Clients with

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[2] The SAC is 198 pages long. It includes 393 paragraphs of allegations in 70 pages plus 21 exhibits in 128 pages.

legal services as may be requested by Clients in support of Clients[’] legal malpractice claim against R. Keith McKellogg”; Mr. Hudack “shall represent (pro per) his personal interests and his interests in the Larry J. and Marianne S. Hudack trust dated July 7, 1997”; Attorney shall represent the interests of Mrs. Hudack and her interest in the trust; and Mr. Hudack and Attorney “will work as a team in close cooperation as has been done in the past.” By signing the Fee Agreement, plaintiffs expressly acknowledged Blasser was not “guarantee[ing] any particular result” and had “never worked on a legal malpractice case.”

Plaintiffs’ legal malpractice case against McKellogg proceeded to arbitration on May 18, 2015, at Judicial Arbitration and Mediation Services in San Diego. On May 20, the third day of the arbitration, plaintiffs agreed to settle their legal malpractice case against McKellogg for $185,000 and directed Blasser to terminate the arbitration. Blasser was “forceful and aggressive” in inducing plaintiffs to settle; he told plaintiffs they were going to lose their case and would be responsible for paying McKellogg’s attorney fees and costs of over $300,000. Plaintiffs agreed to the settlement only after Blasser agreed plaintiffs would not have to pay Blasser any more money.

In exacting detail, the SAC alleges Blasser was unprepared and incompetent to handle plaintiffs’ legal malpractice case against McKellogg, and Blasser concealed his inability to handle the case from plaintiffs before the arbitration, along with many other facts in connection with the case and the arbitration. For example, at the arbitration, Blasser called plaintiffs and their son to testify as plaintiffs’ only witnesses, without

adequately preparing any of them to testify. Blasser also failed to secure the testimony at the arbitration of plaintiffs' two previously retained expert witnesses.

On May 20, the third day of the arbitration, and after plaintiffs and their son had testified and been cross-examined, Blasser called the two experts by telephone and asked them to testify on May 21, but both refused to testify on May 21. Before the arbitration, Blasser directed plaintiffs to enter into substantively unconscionable contracts with the experts and to pay the experts tens of thousands of dollars without requiring the experts to provide plaintiffs with anything of value. Blasser also "instructed" plaintiffs not to "communicate" with the experts and concealed the experts' opinions from plaintiffs.

The experts were only qualified to opine on "a small fraction of the malpractice[] issues" relevant to the case against McKellogg. Blasser and the experts "conspired to burden [p]laintiffs with costs" that were not plaintiffs' responsibility, and in total the experts "extracted more than $90,000 from [p]laintiffs." Plaintiffs essentially claim that Blasser and Blasser Law deprived plaintiff of the benefit of their legal malpractice claim against McKellogg by mishandling the arbitration. For each cause of action, the SAC seeks $1,555,521 in compensatory damages—comprised of the $1,740,521 plaintiffs lost in the Siggard action less the $185,000 settlement plaintiffs received from McKellogg—plus punitive damages and other relief according to proof.

B. *Procedural History*

On August 22, 2016—more than one year after plaintiffs settled the McKellogg matter at the arbitration on May 20, 2015—plaintiffs filed their original complaint in this

action. The court sustained Blasser's demurrer to the original complaint, with leave to amend. Plaintiffs filed a first amended complaint (FAC) in February 2017, and Blasser demurred to the FAC. The court overruled Blasser's demurrer to the FAC's first cause of action for "fraud," and Blasser did not challenge the FAC's second cause of action for "fraudulent inducement/promissory fraud."

The court sustained, without leave to amend, Blasser's demurrer to the FAC's other causes of action—the third through ninth—alleging conversion (third), abuse of process (fourth), constructive fraud (fifth), breach of contract (sixth), professional malpractice (seventh), breach of fiduciary duty (eighth) and elder abuse (ninth). The court ruled these causes of action were either factually deficient or were barred by the one-year limitations period of section 340.6.

The court later granted plaintiffs' motion for leave to file the SAC. The SAC was filed in December 2017 and named Blasser and Blasser Law as defendants. Defendants demurred to the SAC,[3] and the court sustained the demurrer, without leave to amend, "based on the statute of limitations." An April 2, 2018, minute order states: "The [SAC] is re-crafted to attempt to circumvent the SOL [statute of limitations] issues of prior pleadings as it relates to professional malpractice claims which have long since expired."

[3] The court issued a tentative ruling sustaining the demurrer to the SAC. Neither party requested oral argument, but the parties appeared at an April 2, 2018, hearing on the demurrer. The record does not contain defendants' demurrer to the SAC, the court's tentative ruling sustaining that demurrer, or a reporter's transcript of the April 2 hearing, but it includes plaintiffs' opposition to the demurer.

On April 6, 2018, the court issued a written order sustaining defendants' demurrer, without leave to amend, and dismissing plaintiffs' entire action. In this order the court wrote that the SAC "is riddled with factual allegations of legal malpractice and essentially alleged that Defendants were 'incompetent and unprepared,' which is an allegation based on negligence, not fraud. *See*, Ventura County Nat. Bank v. Macker (1996), 49 Cal.App.4th 1528, 1530 and Foxen v. Carpenter (2016), 6 Cal.App.5th 284, 292 ('Plaintiff will not be able to establish her contract claims against Defendants without demonstrating a breach of professional duties owed to her, or non-legal services closely associated with the performance of their professional duties as lawyers. Section 340.6(a) therefore applies.')" Plaintiffs timely appealed.

III. DISCUSSION

Plaintiffs claim the trial court erroneously determined that the one-year limitations period of section 340.6(a) barred each cause of action alleged in the SAC. We conclude the trial court correctly determined that section 340.6(a) bars all of the SAC's claims, and plaintiffs have not shown there is a reasonable possibility they can amend the SAC to state a claim for actual or intentional fraud.

A. *Standard of Review*

A general demurrer challenges the legal sufficiency of the factual allegations of a complaint by claiming the complaint fails to state facts sufficient to constitute a cause of action. (*Behnke v. State Farm General Ins. Co.* (2011) 196 Cal.App.4th 1443, 1452; § 430.10, subd. (e).) We review de novo an order sustaining a general demurrer. (*Zelig*

v. County of Los Angeles (2002) 27 Cal.4th 1112, 1126.) That is, we independently review the complaint to determine whether it alleges facts sufficient to state a cause of action under *any* legal theory. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38-39.) We assume as true the complaint's well-pleaded or implied factual allegations but not contentions, deductions, or conclusions of fact or law. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

We also consider exhibits to the complaint, but to the extent the complaint's factual allegations conflict with the exhibits' contents, we rely on the exhibits' contents and treat as "surplusage" the complaint's conflicting factual allegations. (*Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 288.) If the demurrer was sustained without leave to amend, we also determine whether there is a reasonable possibility the plaintiff could cure the defect by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) If not, we affirm the order sustaining the demurrer, but if so we reverse. (*Ibid*.)

"'When a complaint shows on its face that it is barred by a statute of limitations, a general demurrer may be sustained and a judgment of dismissal may be entered.'" (*Barker v. Garza* (2013) 218 Cal.App.4th 1449, 1454.) But, """'A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. [Citation.] In order for the bar . . . to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred.'""" (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1232 (*Lee*).)

B. *Section 340.6(a) Bars All of the Claims Alleged in the SAC*

Section 340.6(a) provides: "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission . . . ." (Italics added.)

In the context of section 340.6(a), "a 'professional obligation' is an obligation that an attorney has by virtue of being an attorney, such as fiduciary obligations, the obligation to perform competently, the obligation to perform the services contemplated in a legal services contract into which an attorney has entered, and the obligations embodied in the State Bar Rules of Professional Conduct." (*Lee*, *supra*, 61 Cal.4th at p. 1237.) "Section 340.6(a) applies to claims that necessarily depend on proof that an attorney violated a professional obligation in the course of providing professional services *unless the claim is for actual fraud*." (*Id*. at p. 1239, italics added.)

As noted, the SAC alleges six causes of action styled as, "deceit," "constructive fraud," "fraudulent concealment," "fraudulent inducement," "fraud," and "conspiracy to commit fraud." In support of each of these claims, the SAC essentially alleges Blasser was unprepared and incompetent to handle plaintiffs' legal malpractice claim against McKellogg and the arbitration of that claim. It also alleges Blasser concealed his incompetence from plaintiffs and mishandled the arbitration, forcing plaintiffs to settle their $1,740,521 legal malpractice claim for $185,000 and causing plaintiffs to incur

compensatory damages of $1,555,521 ($1,740,521 less $185,000). The gravamen of the SAC is its allegation that "Blasser's conduct throughout the time he represented Plaintiffs was designed to conceal from Plaintiffs that Blasser was hopelessly incompetent to represent them and too lazy to prepare himself to provide that competent representation."

All six of the SAC's causes of action necessarily depend on proof that Blasser or Blasser Law violated a professional obligation in the course of providing professional services to plaintiffs, namely, Blasser's obligation as an attorney to competently prepare for and competently handle the arbitration against McKellogg. (See *Lee, supra*, 61 Cal.4th at p. 1237.) The SAC's allegations also show that plaintiffs were aware of Blasser's unpreparedness and incompetency on May 20, 2015, the day plaintiffs directed Blasser to terminate the arbitration and settle their case against McKellogg for $185,000. But plaintiffs did not file their original complaint against Blasser until August 22, 2016, more than one year later. Thus, all of the claims alleged in the SAC are barred by the one-year limitations period of section 340.6(a), unless any of the claims are for "actual fraud." (*Lee, supra*, at p. 1239.) As we next explain, none of the SAC's claims amount to "actual fraud." (§ 340.6(a).)

C. *None of the SAC's Allegations Amount to "Actual Fraud" (§ 340.6(a))*

"A fraud claim against a lawyer is no different from a fraud claim against anyone else." (*Vega v. Jones, Day, Reavis & Pogue* (2004) 121 Cal.App.4th 282, 291.) But, "the exception for actual fraud in section 340.6 was intended to apply to intentional fraud, not constructive fraud resulting from negligent misrepresentation. Constructive fraud

may result from a breach of fiduciary duty, regardless of intent or motive, and the Legislature intended to only except instances of actual fraud on grounds that acts of actual fraud should not be treated as legal malpractice. [Citations.]" (*Quintilliani v Mannerino* (1998) 62 Cal.App.4th 54, 69-70.)

The elements of actual or intentional fraud are: "'(1) representation; (2) falsity; (3) knowledge of falsity; (4) *intent to deceive*; and (5) reliance and resulting damage (causation).' [Citation.]" (*Vega v. Jones, Day, Reavis & Pogue*, *supra*, 121 Cal.App.4th at p. 291, italics added.) The "[a]ctive concealment or suppression" of a fact by a person who has a duty to disclose the fact is the equivalent of a false representation of the fact. (*Ibid.*; Civ. Code, § 1572 [defining "actual fraud" in the contractual context].)[4] The

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[4] Civil Code section 1572 provides: "Actual fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract: [¶] 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; [¶] 2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; [¶] 3. The suppression of that which is true, by one having knowledge or belief of the fact; [¶] 4. A promise made without any intention of performing it; or, [¶] 5. Any other act fitted to deceive."

Actual fraud in the contractual context is similar to the tort of fraudulent deceit. Civil Code section 1709 provides: "*Fraudulent deceit*. One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers." Civil Code section 1710 defines deceit for purposes of fraudulent deceit: "A deceit, within the meaning of the last section, is either: [¶] 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; [¶] 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; [¶] 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or, [¶] 4. A promise, made without any intention of performing it."

limitations period for actual or intentional fraud, including a fraud claim against an attorney, is three years. (Code Civ. Proc., § 338, subd. (d); *Foxen v. Carpenter, supra*, 6 Cal.App.5th at p. 295.)

In determining the applicable limitations period, "'courts consider "the nature of the right sued upon, not the form of the action or the relief demanded."'" (*Ventura County Nat. Bank v. Macker* (1996) 49 Cal.App.4th 1528, 1530 (*Macker*).) Although each of the SAC's six alleged causes of action were pled in terms of some form of fraud, none of the SAC's allegations are based on defendants' actual or intentional fraud. They are instead based on defendants' negligence in handling their professional obligation to plaintiffs, as plaintiffs' attorneys, to competently handle plaintiffs' legal malpractice claim and arbitration against McKellogg.

Macker is instructive and its facts are directly analogous. In *Macker*, the plaintiff bank sued an accounting firm for accounting malpractice, alleging in a first cause of action styled intentional misrepresentation that the firm's accountants knowingly made false representations in audit reports for a company's financial statements. (*Macker*, *supra*, 49 Cal.App.4th at p. 1529.) In a second cause of action styled negligent misrepresentation or deceit, and in a third styled fraud, the bank alleged that the accountants intentionally concealed their lack of knowledge or expertise to prepare an audit. (*Ibid*.) The second cause of action alleged "in substance that defendant accountants made false representations concerning an audit report of a company's financial statements and certified that the audit report was accurate, that defendants knew

the audit report was to be used by plaintiff in determining a line of credit for the company, that the audit report grossly overstated the value of the company, that plaintiff, in reliance on the audit report offered the company a line of credit and suffered damage thereby, that defendants lacked sufficient or accurate information to make representations concerning the company's financial condition, and that they did not possess sufficient knowledge, expertise, or experience to accurately evaluate the company's financial condition." (*Id*. at p. 1530.)

The plaintiff bank claimed that the accountants' actions amounted to a form of "deceit," namely, "'[t]he assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.'" (*Macker, supra*, 49 Cal.App.4th at p. 1530; Civ. Code, § 1710, cl. 2.)[5] The *Macker* court disagreed and reasoned "the essence" of the second cause of action was "negligence, not fraud" because the allegations showed "a failure to meet a standard of reasonable care which results in the tortious invasion of a property right." (*Macker, supra*, at p. 1531.) Similarly here, the SAC's allegations that defendants actually intended to deceive plaintiffs by concealing and failing to disclose defendants' unpreparedness and incompetency to handle the McKellogg matter amount to negligence, not actual or intentional fraud.

Any claim that an attorney or an accountant failed to competently handle a professional obligation can be pleaded in conclusory terms of actual or intentional fraud. But adequately pleading that a professional committed actual or intentional fraud in

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[5] See footnote 4, *ante*.

failing to competently perform a professional obligation requires more than conclusory allegations that the professional deliberately concealed his or her incompetency to perform the obligation. It requires an allegation of *particular facts* showing that the professional, in failing to competently perform the professional obligation, *actually intended to deceive* the person to whom the professional obligation was owed to believe that the professional was competent to handle the obligation when the professional, in fact, was not. (See *Macker, supra*, 49 Cal.App.4th at pp. 1529-1531; see also *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1036-1042 [complaint against attorneys sounded in negligence and did not show the attorneys acted with oppression, fraud, or malice, entitling the plaintiff to punitive damages or that the plaintiff was entitled to emotional distress damages]; *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331-1332 [each element of fraud must be pled with specificity, and the usual policy of liberally construing a pleading against a general demurrer does not apply to a pleading that fails to specifically allege fraud].)

The SAC does not plead particular facts showing that, at any point, defendants actually intended to deceive plaintiffs to believe that defendants were, in fact, competent to handle the McKellogg matter when, in fact, defendants were not. Rather, the SAC's detailed allegations show that defendants were, at worse, unprepared and incompetent to discharge their professional obligation to competently handle the McKellogg matter. Additionally, plaintiffs have not met their burden of showing there is a reasonable possibility they can amend the SAC to show defendants committed actual or intentional

fraud. (*Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318.) Thus, the SAC's six alleged causes of action are barred by section 340.6(a)'s one-year limitations period. (*Lee*, *supra*, 61 Cal.4th at p. 1239.) As such, the SAC does not state a cause of action against defendants, and the judgment dismissing plaintiffs' entire action is correct.

D. *Plaintiffs' Additional Arguments Lack Merit*

Plaintiffs raise several additional arguments challenging the court's order sustaining defendants' general demurrer to the SAC, without leave to amend. None of these additional claims have merit.

1. Defendants Filed a General Demurrer to the SAC

Plaintiffs assert that defendants filed only a special demurrer to the SAC and that the trial court failed to rule on a general demurrer. (See § 430.10.) But as defendants point out, nothing in the record supports this assertion. Indeed, the record does not contain a copy of defendants' demurrer to the SAC.[6] Thus, plaintiffs have not designated a record sufficient to support their assertion that defendants did not file and that the trial court did not sustain a general demurrer to the SAC. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [error must be affirmatively shown on appeal].) Moreover, the court sustained the demurrer on the ground the SAC was barred by section 340.6(a)'s one-year limitations period. This plainly indicates that defendants filed a general demurrer to the SAC (§ 430.10, subd. (e)) and that the trial court ruled on the general demurrer.

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[6] See footnote 3, *ante*.

2. Mr. Hudack's Claim That He Was Not Defendants' Client is Unavailing

Mr. Hudack claims he, unlike Mrs. Hudack, did not have an attorney-client relationship with defendants and, therefore, section 340.6(a)'s one-year limitations does not bar his claims against defendants. This claim overlooks the plain language of the Fee Agreement, which is attached as an exhibit to the SAC.

The Fee Agreement defines Mr. and Mrs. Hudack as "Clients," defines William Blasser of Blasser Law as "Attorney," and provides: "Attorney shall provide Clients with legal services as may be requested by Clients in support of Clients[']legal malpractice claim against . . . McKellogg . . . ." Thus, despite Mr. Hudack's claim to the contrary, Mr. Hudack had an attorney-client relationship with defendants, and section 340.6(a) bars both his and Mrs. Hudack's legal malpractice claims against defendants.

Mr. Hudack emphasizes that the Fee Agreement contemplated that Mr. Hudack would represent himself in the arbitration against McKellogg. To be sure, the Fee Agreement provides that Mr. Hudack shall "represent (pro per) his personal interests and his interests" in his and his wife's trust, and, in contrast, provides that Attorney shall represent Mrs. Hudack's interest and her interest in the trust, and that Mr. Hudack and Attorney "will work as a team in close cooperation as has been done in the past."

When considered in context of the entire SAC and the Fee Agreement, these provisions of the Fee Agreement, and Mr. Hudack's contemplation that he would represent himself at the arbitration, do not mean there was no attorney-client relationship between Mr. Hudack and defendants. Indeed, the SAC is rife with allegations that both

plaintiffs relied on defendants to competently prepare for and handle their legal malpractice claim against McKellogg, and to competently prepare for and handle the arbitration. The SAC alleges: "There is a great disparity in legal knowledge and age between Plaintiffs and Blasser. Blasser had a legal education and some years of experience in litigation. Plaintiffs are elders and farmers with no legal education, no legal training, and no knowledge of legal protocols. Plaintiffs relied on Blasser to guide them through the legal maze that awaited. Furthermore, the conduct of the parties, as alleged in the SAC, shows there was an attorney-client relationship between Mr. Blasser and defendants. (*Hecht v. Superior Court* (1987) 192 Cal.App.3d 560, 565-566.)

3. Any Cause of Action for Intentional Interference with Prospective Economic Advantage Is Also Time-barred

Plaintiffs argue the SAC effectively states a cause of action against defendants for intentionally interfering with plaintiffs' prospective economic advantage, namely, their prospective economic advantage in their legal malpractice claim against McKellogg. This argument is unavailing. Even if the SAC stated such a claim, the claim would be barred by section 340.6(a)'s one-year limitations period because the claim would "necessarily depend on proof" that defendants "violated a professional obligation in the course of providing professional services" to plaintiffs. (*Lee*, *supra*, 61 Cal.4th at p. 1239.)

4. No Collateral Estoppel

Plaintiffs claim the doctrine of collateral estoppel precluded Blasser from demurring to the SAC because the court previously overruled Blasser's demurrer to the "fraud" and "fraudulent inducement" causes of action alleged in the *FAC*. Plaintiffs claim the court's prior order was a "final ruling" which Blasser could not collaterally attack by demurring to the SAC.[7] Plaintiffs are mistaken.

First, the SAC superseded the entire FAC. (*Avalon Painting Co. v. Alert Lumber Co.* (1965) 234 Cal.App.2d 178, 182 [as a general rule, "amended pleadings completely supersede all prior pleadings and extinguish them for the purposes of demurrer."].) Moreover, "the trial court retains the inherent authority to change its decision at any time prior to the entry of judgment." (*Darling v. Kritt* (1999) 75 Cal.App.4th 1148, 1156; accord, *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107.) "A judgment is final . . . when it terminates the litigation between the parties on the merits and leaves nothing in the nature of judicial action to be done . . . ." (*Nave v. Taggart* (1995) 34 Cal.App.4th 1173, 1177.) The court's prior orders overruling the demurrer to the FAC's causes of action for fraud did not result in a final judgment on the merits of the action. Thus, the

[7] It is unclear from the record whether Blasser Law was named as a defendant to the FAC, but the record indicates that both Blasser and Blasser Law answered the FAC. Plaintiffs were later granted leave to file the SAC. The register of actions states: "Plaintiffs have submitted the SAC which they claim adds newly discovered defendant Blasser Law and clarifies or adds newly discovered claims with the additional fraud causes of action."

court was not barred from changing its rulings under the doctrine of collateral estoppel. (*Patel v. Crown Diamonds, Inc.* (2016) 247 Cal.App.4th 29, 39.)

The record does not include a copy of the FAC. Thus, we are unable to discern how or whether the FAC's allegations differed from the SAC's. Nonetheless, in sustaining defendants' general demurrer to the entire SAC, the trial court implicitly concluded that none of the SAC's allegations stated a claim for actual or intentional fraud. The trial court had inherent authority to make this ruling, even if it conflicted with its prior ruling. Lastly, for reasons explained, the trial court's order sustaining defendants' general demurrer to the entire SAC ruling was correct.

IV. DISPOSITION

The judgment of dismissal is affirmed. Defendants shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.